

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 30, 1999

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324b Proceeding
)	OCAHO Case no. 99B00016
Kendi Iron Works, Inc.)	
Respondent.)	
)	
)	

FINAL DECISION AND ORDER

Appearances: Carol J. Mackela, Esquire
Office of Special Counsel for Immigration Related Unfair
Employment Practices for complainant

Gregory Riolo, Esquire
Jackson, Lewis, Schnitzler & Krupman for respondent

Before: Honorable Joseph E. McGuire

On December 18, 1998, complainant, acting by and through the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) and on behalf of Mr. Sydney Parris (Mr. Parris), commenced this action which arises under the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324a, by having filed a one-count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Kendi Iron Works, Inc. (respondent/Kendi Iron Works).

That initiating pleading contained an allegation of unfair immigration related employment practices in violation of IRCA, namely, citizenship status discrimination, for which a civil money penalty of \$2,000 had been assessed. In addition, OSC requested that Kendi Iron Works be ordered to hire Mr. Parris in the position for which he had applied, and also be ordered to pay Mr. Parris full back pay, interest and retroactive seniority and benefits.

The Complaint alleged that Kendi Iron Works violated the provisions of 8 U.S.C. §

1324b(a)(1)(A) by having failed to hire Mr. Parris, a United States citizen, for the position of ARC welder. At the time Mr. Parris interviewed at Kendi Iron Works, that firm had allegedly filed for a labor certification to hire an alien for that position since it had represented there were then no qualified United States citizens available to fill that position.

On April 29, 1999, the parties filed a Joint Motion to Dismiss accompanied by a Settlement Agreement and General Release, which resolves all matters in controversy.

Under the pertinent rule of OCAHO Rules of Practice and Procedure, 64 Fed. Reg. 7066, 7075 (1999) (to be codified at 28 C.F.R. §§ 68.14),¹ where the parties have submitted a settlement agreement containing consent findings and a proposed decision and order, the administrative law judge may, if satisfied with its timeliness, form and substance, accept such an agreement by entering a decision and order based upon the agreed findings.

It is found that the terms of the Settlement Agreement and General Release comply with the applicable regulations and are appropriate as to timeliness, form, and substance pursuant to the provisions of the pertinent procedural rule. It is further found, under the terms of the Settlement Agreement and General Release and pursuant to the provisions of the procedural rule, that:

1. OSC has withdrawn its request for a hearing on the merits;
2. Kendi Iron Works agrees to pay Mr. Parris, in the agreed upon four installment payments, the total sum of \$10,200 in back pay for the 17-week period from February 23, 1998 to March 20, 1998 and from October 26, 1998 to February 13, 1999. The respondent firm further agrees to pay a total civil money penalty sum of \$1,800 to the United States Treasury in four installments, also, in the manner set forth in that agreement;
3. The Settlement Agreement and General Release shall not in any way be construed as an admission of liability by Kendi Iron Works of any act of discrimination in violation of 8 U.S.C. § 1324b;
4. Kendi Iron Works further agrees to conduct and maintain hiring practices which do not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b;
5. Kendi Iron Works also agrees to post a notice (Attachment B) in all places where

¹Portions of the Rules of Practice and Procedure for Administrative Hearings, codified at Part 68 of Title 28 of the Code of Federal Regulations, have been amended by the interim rule of February 12, 1999. Citation to the amended portions of Part 68 are to the interim rule published in the Federal Register, 64 Fed. Reg. 7066 (1999). Citation to the portions of Part 68 which were not affected by the interim rule are to the most recent volume of the Code of Federal Regulations, 28 C.F.R. Part 68 (1998).

notices are normally posted for a period of one year beginning ten days from the date it receives a fully signed copy of the Settlement Agreement and General Release;

6. Kendi Iron Works further agrees to educate its personnel concerning their responsibilities under IRCA. All employees who are involved in the hiring process will either attend a seminar concerning an employer's obligations under IRCA or view an educational videotape regarding IRCA provided by OSC. Kendi Iron Works further agrees to require each employee attending the educational session or viewing the videotape to complete and sign a Declaration of attendance (Attachment C);

7. The parties have waived any further procedural steps before the administrative law judge;

8. The parties have also waived any right to challenge or contest the validity of this Decision and Order;

9. The entire record on which this Decision and Order is based consists solely of the Complaint, the Notice of Hearing, and the Settlement Agreement and General Release, which are incorporated herein by reference;

10. This Decision and Order shall have the same force and effect as if this ruling had been issued following a full administrative hearing.

Order

The Settlement Agreement and General Release, which is dispositive of all issues herein, is approved and the Complaint is hereby ordered to be dismissed with prejudice to refile.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 1999, I have served copies of the foregoing Final Decision and Order to the following persons at the addressees shown, in the manner indicated:

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